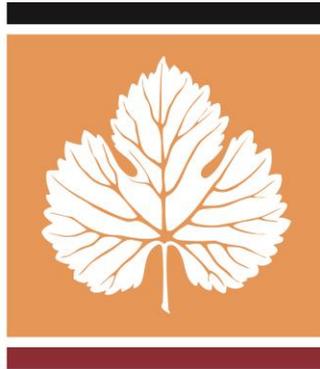


# South Australian Government

## *Submission to the review of the Return to Work Act 2014*



**SOUTH AUSTRALIAN WINE INDUSTRY  
ASSOCIATION INCORPORATED**

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**DATE:** 9 February 2018

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## 1. INTRODUCTION

1. The South Australian Wine Industry Association Incorporated (SAWIA) is an industry employer association representing the interests of wine grape growers and wine producers throughout the state of South Australia.
2. SAWIA is a registered association of employers under the South Australian Fair Work Act 1994 and is also recognised as a Recognised State-Registered Association under the *Fair Work (Registered Organisations) Act 2009*.
3. SAWIA is a not for profit incorporated association, funded by voluntary member subscriptions, grants and fee for service activities, whose mission is to provide leadership and services which underpin the sustainability and competitiveness of our members' wine businesses.
4. SAWIA membership represents approximately 96% of the grapes crushed in South Australia and about 36% of the land under viticulture. Each major wine region within South Australia is represented on the board governing our activities.
5. SAWIA has a strong track record as an industry leader and innovator in many areas. SAWIA pro-actively represents members and the greater wine industry with government and related agencies in a wide variety of aspects of business in the wine sector.
6. SAWIA's policy positions in relation to employment and safety are proposed and endorsed by our Employee Relations and Work Health and Safety Committees, which comprises of HR, Safety and Workers Compensation Executives and Senior Managers, some with national responsibilities, drawn from the membership.

## 2. BACKGROUND

This submission is made in response to the State Government appointing the Honourable John Mansfield AM QC, to conduct an independent review of the *Return to Work Act 2014* (the Act). It is mandatory for the review to be carried out under the Act and being required to take place 3 years after the commencement of the Act. The review has a timeframe of 6 months within which to be completed.

SAWIA is responding to the review on behalf of its members and with regard to the scope of the **terms of reference**, which are:

1. The extent to which the scheme established by the Act and the dispute resolution processes under the Act and the *South Australian Employment Tribunal Act 2014* have achieved a reduction in the number of disputed matters and a decrease in the time taken to resolve disputes (especially when compared to the scheme and processes applying under the repealed Act);
2. Without limiting paragraph (1), whether the jurisdiction of the SAET under the Act should be transferred to the South Australian Civil and Administrative Tribunal;
3. The extent to which there has been an improvement in the determination or resolution of medical questions arising under the Act (especially when compared to the system applying under the repealed Act);
4. The performance of RTWSA in managing claims including RTWSA's outcomes in reducing instances of work injury;

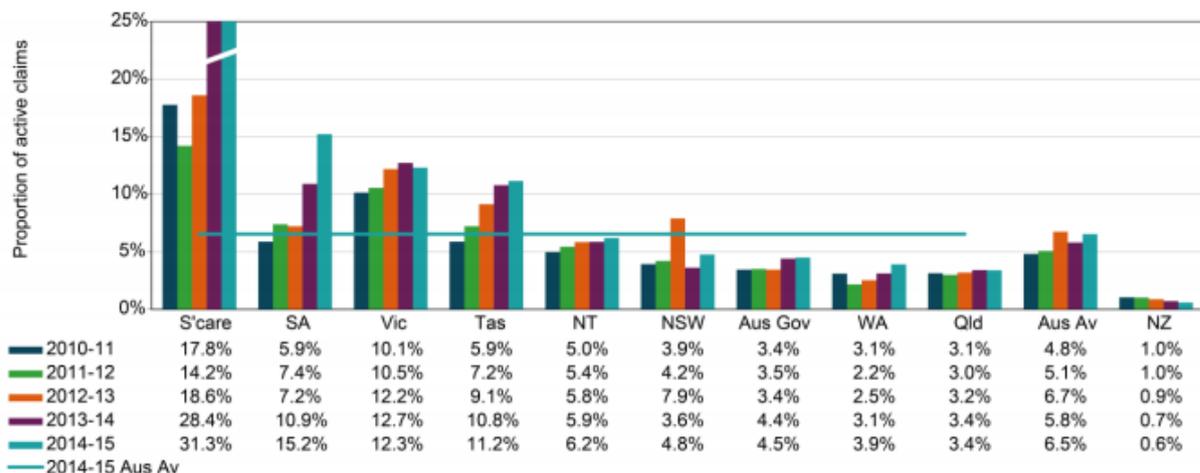
5. The performance of self-insured employers including outcomes in reducing instances of work injury;
6. Changes in return to work rates at key milestones outlining factors influencing any improvement or deterioration;
7. Factors contributing to non-seriously injured workers failing to achieve a return to work within two years;
8. Any additional recommendations regarding reskilling services to assist return to work outcomes;
9. Whether the scheme has yet achieved financial stability and if not when the scheme will be likely to be mature and stable;
10. Any other recommendations based on your review of the administration and operation of the Act which you consider appropriate and consistent with the objects of the Act.

### 3. SAWIA'S SUBMISSION

#### Disputation Rate

1. SAWIA notes the statistics provided by ReturntoWorkSA (RTWSA) in their primary submission<sup>1</sup> pointing to a reduction in overall dispute numbers since the commencement of the Act.
2. While any reduction in the proportion of claims with a dispute is a positive step, it is important that the rate of disputation is put in context and compared with the disputation rate of other schemes.
3. Safe Work Australia publishes annual statistics on the performance of workers compensation schemes. According to the most recent report<sup>2</sup>, SA is the worst performing jurisdiction of all States and Territories with a 15.2% disputation rate compared to 4.8% (NSW), 3.9% (WA) and 3.4% (QLD). In SAWIA's view it is neither acceptable nor defensible for the South Australian Scheme to have disputation rate that is 3-4 times greater than other jurisdictions. It would be useful to explore why the rate is so high in South Australia compared other jurisdictions.

#### Indicator 20 – Proportion of claims with dispute



Source: Safe Work Australia

4. While our members have not experienced an overall reduction in disputes, in their experience disputes are being resolved more quickly than under the previous legislation.

#### Determination of Medical Questions

5. The feedback we have received does not go to medical questions being disputed, but inefficiencies and associated costs relating to the process of obtaining medical opinions.

For example, the claims agent required the employee to attend an appointment with a medical specialist. Rather than simply assessing the employee as requested, the medical specialist provided an opinion and answered a question that wasn't actually asked (i.e. % of disability was not asked).

<sup>1</sup> ReturnToWorkSA 2018, Submission to the Review of the Return To Work Act (2014), 11 January 2018, p. 3

<sup>2</sup> Safe Work Australia 2017, *Comparative Performance Monitoring Report, Comparison of workers' compensation schemes in Australia and New Zealand*, 18<sup>th</sup> Edition, March 2017, p. 31

The employee was required to go back to the specialist for a second examination and report so that the question was officially asked and could therefore be answered – the percentage given was the same both times. The cost to the scheme for the second report was over \$1,000.00. When the claims agent was asked about this, the employer was advised that the Act “made me do it”.

So the first time the medical advice was provided by the medical expert, it was deemed that an unsolicited opinion could not be relied on yet, such that the employee was sent a second time to be seen by the specialist just so an answer to a specific question could be asked in accordance with the Act. This is not a cost-effective way of managing the scheme and must be addressed.

## **Managing claims**

6. In the experience of SAWIA members, the claims management process by the two claims agents needs improvement. There are concerns about inconsistent outcomes depending on the individual person managing the claim within the respective claims agent.
7. Further, there have been instances where claims have been accepted without the employer ever having been advised that a claim had been lodged. If the employer is ultimately responsible how can they manage the risk of future or further injuries if they are not informed that a claim has been lodged? And how can an employer respond to a claim if they do not know a claim has been made? How can a determination be made if all parties have not been able to respond to the initial claim?
8. Claims agents' must ensure that communication with employers is improved and that employers receive early information about the claim and are able to provide information which could have a material impact on the determination of the claim.
9. Others have relayed information about the claims agent making a decision about a claim without having taken all the information into account.

In this example, the claims agent contacted the employer with a determination of the claim and when questioned about whether the claims agent had taken all the information into account, namely had they read the report of the private investigator who had interviewed various persons involved (at the request of the claims agent).

The claims agent eventually disclosed that they had not read the investigators report, and therefore had not taken that information into account. The particular person managing the claim went away and read all the information then rang back with a different determination.

10. It is unsatisfactory that proper regard to the processes of determining a claim is not occurring, and what is concerning is that many would not have questioned the claims manager upon the initial determination. Such stories undermine the credibility of the system and claims agents' ability and must be addressed.

## **Self-insured employers**

11. A number of SAWIA members are self-insured and regularly share information demonstrating their ability to respond to a manage claims in a prompt manner and investing resources to facilitate better return to work outcomes.

12. SAWIA has a well-established working relationship with Self-Insurers of South Australia (SISA) who have made extensive submissions on the importance of and performance of self-insurance.

**Non-seriously injured workers: Failing to return to work within two years**

13. RTWSA has provided statistics<sup>3</sup> on the return to work rates at key milestones demonstrating an improvement the return to work rates since 2013-2014.
14. While it is positive that there appears to be an improvement in the return to work rates, SAWIA submits that these statistics should be approached with some caution. Prior to the enactment of the Act it was a well-known fact that the South Australian workers compensation system was the worst performing system in the country on a range of measures.
15. There have been some small improvements in the return to work rates. However, it is important that the return to work rate is put in context and compared with the return to work rate of other schemes.
16. Once again Safe Work Australia provides valuable<sup>4</sup> comparative data on the performance of the workers compensation systems in Australia as set out below:

**Indicator 19 – Current return to work rate for 2012, 2014 and 2016**



Source: Safe Work Australia

17. The above statistics demonstrate that despite the commencement of the Act, SA still is performing worse in relation to return to work than NSW, WA, VIC and the national average.
18. SAWIA would be interested in discussing and assisting RTWSA with more initiatives as to how there could be an improvement to the return to work rate, by all parties to the process.

<sup>3</sup> ReturnToWorkSA 2018, Submission to the Review of the Return To Work Act (2014), 11 January 2018, p. 17

<sup>4</sup> Safe Work Australia 2017, *Comparative Performance Monitoring Report, Comparison of workers' compensation schemes in Australia and New Zealand*, 18<sup>th</sup> Edition, March 2017, p. 30

## **Financial stability**

19. While the commencement of the Act has resulted in a lower average premium rate, the average premium rate (which is welcomed by our members) in South Australia still is substantially higher than other jurisdictions as demonstrated by RTWSA's own submission.
20. According to their submission, the SA average premium rate is higher than WA (1.478%), VIC (1.272%), NSW (1.327%) and QLD (1.2%). This is unsatisfactory and contributes to the cost of doing business in SA higher than for interstate competitors. Therefore the scheme needs to continue to make one of its objectives to lower average premium rates more in-line with interstate schemes.
21. There are several potential explanations for the substantially higher average premium rate. This includes that despite RTWSA launching a new case management mode the efficiencies and improvements have not resulted in sufficient savings to reduce the average premium rate to the interstate average. Further, the application of the Act may have resulted in a lower threshold for claims to be accepted than other jurisdictions.
22. In this context we are aware of appeals before the Supreme Court of South Australia that could result South Australia returning to position of the worst performing workers compensation as measured by the average premium rate, including the estimated direct impact of the Mitchell case currently before the Supreme Court.

END OF SUBMISSION